

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

UNITED STATES OF AMERICA and)	
THE STATE OF WISCONSIN,)	
)	
Plaintiffs,)	Civil Action No. 10-C-910
)	
v.)	Hon. William C. Griesbach
)	
NCR CORPORATION, <i>et al.</i>)	
)	
Defendants.)	
)	

**THIRD DECLARATION OF GEORGE A. BERKEN IN SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

I, George A. Berken, declare as follows:

1. I am employed as an Engineering Project Manager with The Boldt Company (“Boldt”). Boldt personnel have served as members of the Federal and State Governments’ Agency/Oversight Team (“A/OT”) since 2004 for the Lower Fox River and Green Bay Site (“Site”), under a contract between Boldt and the Wisconsin Department of Natural Resources (“WDNR”). I have been personally involved in overseeing remedial design and remedial action work targeting polychlorinated biphenyls (“PCBs”) contamination at the Site as an A/OT member since 2006.

2. As a Boldt employee, I typically devote more than 1900 hours per year to A/OT activities for the Site. I spend most of that time coordinating the A/OT’s review of remedial design plans and remedial action work plans, and to a lesser extent, overseeing the adequacy of the work being implemented in Operable Units 2-5 (“OUs 2-5”) by Tetra Tech EC, Inc. (“Tetra

Tech”) and other contractors and subcontractors working on behalf of the Lower Fox River Remediation LLC (the “LLC”) and its primary members, NCR Corporation and Appleton Papers Inc.

3. As described in my earlier declaration filed in this matter (Dkt. 123), I am familiar with the LLC’s proposed remediation plans for 2011 and the remediation work that would be required under the Modified Work Plan approved by EPA in March 2011 (“Modified Work Plan”).

4. At the LLC’s direction, Tetra Tech’s dredging subcontractor suspended all dredging operations at the Site on July 1, 2011. At this time, the dredging subcontractor’s in-river equipment, including three dredges, has not been removed from the Lower Fox River, and the Sediment Processing Facility has been placed on standby. However, all three dredges have been idle since July 1, 2011. LLC representatives have stated that the only dredging they might perform for the remainder of 2011 is limited to contaminated residuals in portions of Operable Unit 3 that were initially dredged earlier this year. The A/OT estimates that one dredge can complete this Operable Unit 3 residual dredge task in two weeks or less.

5. Since July 1, 2011, the LLC’s contractors and subcontractors have temporarily laid off some personnel (approximately 75 people) responsible for performing dredging-related work at the Site, including staff from the Sediment Processing Facility and truck drivers who transport dredged sediment to the landfill. If full scale dredge remediation does not continue, additional staff (approximately 45 people) will also be laid off.

6. Also on July 1, 2011, Tetra Tech suspended all sand covering activities, although some sand covering activities resumed on or about July 11, 2011 to a limited extent (8 hours per day instead of 24 hours per day required by the Modified Work Plan).

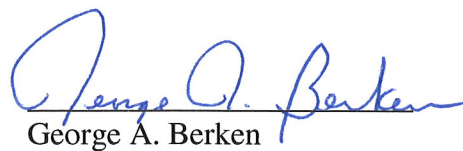
7. From April 18 through July 1, 2011, the LLC's remediation team dredged approximately 231,187 in-situ cubic yards (CY) of sediment. The limited re-dredging that may or may not be authorized by the LLC in Operable Unit 3 in the coming weeks would bring that total to no more than 250,000 CY, as confirmed by the LLC's press release issued on July 12, 2011 and attached to this Declaration, and will most likely total only 236,000 CY for 2011.

8. Based on average actual dredge production rates (CY per week) for 2009 and 2010, and assuming that full-scale dredging resumed by the first week of August, the A/OT believes that the LLC's contractor team can still remove by the end of 2011 the minimum sediment volume stipulated by the EPA's Modified Work Plan, i.e., 605,000 CY of river sediment dredged from Operable Units 3 and 4. The average actual dredge production rates per week in 2009 and 2010 were, respectively, 18,200 and 26,800 CY. The 2010 average dredge rate of 26,800 CY per week better represents the current capability of the Site's operation since the 2009 production rate was achieved during the initial start-up for the Site's operation. Nearly all of the remaining dredging at the Site is in Operable Unit 4, where the dredges can achieve comparatively high production rates (23,000 to 27,000 CY per week). If full scale remediation resumed on or before August 1, 2011, there would be 16 remediation weeks remaining in 2011. Dredging, at a rate of 23,363 CY per week for 16 weeks, will add 373,819 CY to the previously dredged 231,181 CY, resulting in a total removal for 2011 of 605,000 CY.

Third Declaration of George A. Berken in *United States and the State of Wisconsin v. NCR Corp., et al.*, Case No. 10-C-910 (E.D. Wis.)

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on: July 12, 2011


George A. Berken



Fox River Cleanup Project Dredging Concluding for 2011 Season

For Immediate Release

July 12, 2011

(Green Bay, WI) – As the dredging and processing in the Lower Fox River approaches the planned 250,000 cubic yards for 2011, the Lower Fox River Remediation LLC reported at the end of June that it expected to achieve the 2011 dredging objective by mid-July. The work, which began on April 18, 2011, has been in accordance with the 2011 Remedial Action Work Plan (RAWP) submitted to the Wisconsin Department of Natural Resources (WDNR). All work has progressed as specified in the RAWP.

The LLC will continue performing sediment capping and sand covering work in Operable Unit 3 (OU3), also as specified in the RAWP. The capping and covering work is an integral part of the overall remedial plan for the Lower Fox River. This work is expected to be completed in mid-to-late October, completing the remedial activities in OU3.

Dredging and processing to date this year has produced approximately 95,434 tons of processed sediment which resulted in 4,166 truckloads to the Hickory Meadows Landfill.

The first three years of dredging and processing has resulted in approximately:

- 1,493,000 cubic yards of dredged material
- 796,000 tons of processed sediment
- 34,300 truckloads of processed sediment to the landfill

Those figures will increase slightly with the additional residual dredging that will take place in OU3 in the next few weeks.

In addition, it's estimated that approximately 150 acres of river bottom will have been capped or covered during the first three years of the project when spreading operations conclude for the year this fall.

The Fox River Cleanup Project has also accumulated more than 870,000 work hours without a lost time incident dating back to the start of construction of the processing facility on Green Bay's Westside. That figure does not include the transportation hours for hauling the processed sediment to the landfill.

For more information on the Fox River Cleanup Project, visit www.foxrivercleanup.com.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on this day, the foregoing Declaration was filed electronically with the Clerk of the Court using the Court's Electronic Court Filing System, which sent notification of such filing to the following counsel:

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Date: July 13, 2011

s/ Iva Ziza